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# In the Supreme Court of the United States

OCTOBER TERM, 1979

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No. 79-.....

79-638

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LEWIS POE,  
*Petitioner,*

vs.

UNITED STATES OF AMERICA,  
*Respondent.*

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## PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

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October, 1979

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UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT**

Lewis Poe, petitioner, prays for a writ of certiorari to review the judgment of the U. S. Court of Appeals for the Ninth Circuit.

**OPINIONS BELOW**

None. The U. S. District Court for the District of Hawaii rendered judgment without opinion. The Ninth Circuit affirmed without opinion.

## JURISDICTION

The judgment of the Court of Appeals (App. C, *infra*, p. A8), was entered on May 14, 1979. A timely petition for rehearing was denied on July 19, 1979 (App. D, *infra*, p. A9).

The jurisdiction of this Court is invoked pursuant to 28 U.S.C. 1254(1).

## QUESTIONS PRESENTED

1. Whether a wholly sane, innocent, honest, and competent serviceman, after being unlawfully and unconstitutionally arrested and confined in a military psychiatric ward, can be subjected to human drug experimentation by military medical authorities *in the absence of* the serviceman's consent and *in violation of* the Constitution and the Air Force's own regulations.

2. In light of the allegations of the Complaint, which are so far undisputed, whether the courts below denied the plaintiff the due process of law and departed from the accepted and usual course of judicial proceedings when they *assumed* a dispositive question of *fact* without allowing the plaintiff an opportunity to present evidence to rebut said assumption.

3. Whether the Court of Appeals for the Ninth Circuit misconstrued the legal meaning of the *qualifying* phrase "where the injuries arise out of or are in the course of activity incident to service". *Feres v. United States*, 340 U.S. 135, 146 (1950). If so, whether the Court of Appeals misconstrued and misapplied the so-called *Feres* doctrine.

## CONSTITUTIONAL PROVISIONS, STATUTES AND REGULATIONS INVOLVED

The First Amendment provides, in part:

Congress shall make no law \* \* \* abridging the freedom of speech, \* \* \* or the right of the people \* \* \* to petition the Government for a redress of grievances.

The Fourth Amendment provides, in part:

The right of the people to be secure in their persons, \* \* \*, against unreasonable searches and seizures, shall not be violated, \* \* \*.

The Fifth Amendment provides, in part:

No person shall \* \* \* be deprived of life, liberty, or property, without due process of law; \* \* \*.

The Eighth Amendment provides, in part:

\* \* \*, nor cruel and unusual punishments inflicted.

The Ninth Amendment provides:

The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

Paragraph 4-35 of Air Force Manual 168-4, "Administration of Medical Activities," dated 15 March 1973, provides:

"Disposition of Person Who Refuses Professional Care. A medical board will examine any military member who refuses to submit to medical or dental treatment, surgical operation, or diagnostic procedure. If the person bases his refusal on religious grounds, the hospital commander will arrange for the appointment of

a chaplain as an additional member of the board. The board must decide whether:

a. The patient needs the treatment in order to properly perform his military duties, and

b. The treatment can normally be expected to produce the desired results. When the decision on both points is affirmative, the person will be so advised. If he still refuses, he may be tried by court-martial. Whether or not disciplinary action is taken, the unit commander may initiate appropriate action, such as discharge, retirement, etc. However, before doing so, he will refer the case to HQ USAF/SGP, Wash DC 20314, for consideration and review.

NOTE: When emergency treatment, surgery, or diagnostic procedure is required to preserve the health or life of the patient, it may be performed with or without his permission. The same is true when a diagnostic procedure or treatment is necessary to protect the health or life of a patient who has been declared by a qualified psychiatrist to be mentally incompetent."

Paragraph 16-2 of Air Force Manual 168-4 (C5), "Administration of Medical Activities," dated 2 October 73, provides, in part:

"16-2. *Objective.* \* \* \*. The objective of Medical Board evaluation and associated processing is to detect, evaluate, and recommend final disposition of Air Force members whose medical defects preclude performance of worldwide duty, \* \* \*. These actions will be taken as rapidly as is commensurate with sound clinical principles, *the individual's equity and legal rights*, and the Government's interest." (Emphasis added.)

## STATEMENT OF THE CASE

On February 15, 1977, former Air Force Captain Lewis Poe filed a Complaint in the U. S. District Court of Hawaii for damages against the United States, pursuant to the Federal Tort Claims Act (FTCA), for personal injury which was *not* incident to Poe's military duty and which was caused by the negligent and wrongful acts of members of the Department of the Air Force. The jurisdiction of the District Court was invoked pursuant to 28 U.S.C. 1346(b).

Poe's injury arose out of trespass and the invasion of privacy. Poe alleged that he was unlawfully and unconstitutionally arrested; that he was unconstitutionally and involuntarily confined in a psychiatric ward; that his injury was sustained during an unlawful and involuntary medical examination of Poe by agents of the defendant United States. See paragraphs 5-23 of Complaint (App. A, *infra*, pp. A2-A4).

On June 13, 1977, the defendant filed a motion to dismiss. On July 27, 1977, in opposing said motion, Poe wrote:

"A hearing on the merits of this case is required. 'Activity incident to military service' is a question of fact and requires the opportunity of both plaintiff and defendant to offer evidence . . . because, *at the very least*, the *Feres* Court has *already rejected* the Government's contention that there could be no liability to injured servicemen solely because they were in the Army. See *Feres v. United States*, 340 U.S. 135, 146 (1950)."

On August 1, 1977, a hearing on the defendant's motion to dismiss was held before District Judge Samuel



P. King. Poe contended that his injuries were not sustained in the course of his military duty. After oral argument, Judge King, without affording Poe an opportunity to present evidence to show that his injuries were not sustained incident to service, ruled on August 1, 1977:

"I hold that the Feres doctrine applies. The motion is granted on that basis." Subsequently, Poe asked District Judge King what exactly in the Feres doctrine supports the granting of the defendant's motion. Judge King replied: "No, no, no. I just say Feres applied." [August 1, 1977 Transcript of Proceedings, p. 13.]

In *Feres, supra*, at p. 146, the Supreme Court declared:

"the Government is not liable under the Federal Tort Claims Act for injuries to servicemen where the injuries arise out of or are in the course of activity incident to service."

On August 8, 1977, Poe filed his Motion for Reconsideration, urging the District Court "to reconsider its ruling of August 1, 1977 so as to allow for a full evidentiary hearing to properly decide whether Poe was or was not in fact injured 'incident to service'."

On September 2, 1977, the District Court filed its judgment, dismissing the complaint with prejudice.

On September 26, 1977, Poe filed a Notice of Appeal. On page 2 of his Opening Brief to the Ninth Circuit Poe wrote:

*"Statement of the Issue - - - a Question of Fact"*

In light of the allegations in the Complaint, which are so far undisputed, were the alleged injuries which were sustained by the plaintiff 'incident to his military duty/service?' [Absolutely not]."

After briefing by the parties, a hearing was held before the Court of Appeals on May 11, 1979. During said hearing, Circuit Judge James R. Browning queried Poe, resulting in the following exchange:

JUDGE BROWNING: You were taken into custody under military orders?

POE: Yes, but that (sic) orders were unlawful, your Honor.

BROWNING: Pardon?

POE: Those orders were unlawful; they violated not only the Constitution, but they violated Air Force Regulation 123-11 and Air Force Manual 168-4. So here we come again; they don't even follow their own regulations.

BROWNING: You sued under the Federal Tort Claims Act; that's a particular statute - - - which provides a particular remedy \* \* \*. \* \* \*, the argument is that you're on active duty and as a person on active duty you don't have a cause of action under the Federal Tort Claims Act.

POE: If, while on active duty, the injury was sustained incident to service - - - that's what the *Feres* doctrine said.

BROWNING: You were arrested pursuant to an order; even if that order was unlawful, it was certainly incident \* \* \* to the exercise of military authority.<sup>1</sup>

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1. This presumption by Circuit Judge Browning is clearly untenable. Conduct violative of Air Force regulations *cannot* be an exercise of proper and lawful military authority. Conduct violative of regulations is in clear disregard of the lawful exercise of military authority and a denial of due process, if constitutionally obnoxious. Thus, Poe's arrest, confinement, medical mistreatment were not incident to his service but were certainly incident to the improper and illegal exercise of military authority - - - not to mention the constitutional transgressions which were alleged by Mr. Poe.

During the May 11, 1979 hearing, Circuit Judge Herbert Y. C. Choy queried the defendant, resulting in the following pertinent exchanges:

JUDGE CHOY: "How did they reason that acted incident to service if it was as the appellant here alleges - - - contrary to regulations, highly unjustified?"

HERWIG: (Attorney for defendant) "As I understand the incident to service test depends mainly on status. Are you on active duty status at the time or are you on furlough status? \* \* \*. It's only when you're not in active duty status that an injury escapes incident to service. \* \* \*."

JUDGE HUG: "Mr. Poe, you have 4 minutes to respond."

POE: "\* \* \*. And the main argument is, by the Defendant, that if a person is on active duty that means it's incident to service. Now I think that this Court will see a fallacy in this \* \* \*. \* \* \* when Brooks was on furlough,<sup>2</sup> Brooks was on active duty \* \* \*. So if Brooks was on active duty, Brooks recovered under the Federal Tort Claims Act so the argument falls on that one case already. \* \* \*. So the conclusion here, by the Defendant, is, if you're on active duty, whatever happens to you, \* \* \*, it's incident to service and that's not what is before this Court. We have to distinguish what it is to be incident to service or not. \* \* \*."

Three days later, on May 14, 1979, the Ninth Circuit affirmed the judgment of the District Court and filed its Memorandum (App. B, *infra*, p. A7), which was replete

2. Duly authorized furlough is a specifically sanctioned, lawful, in line of duty, military activity. A serviceman on furlough is in an active duty status. This is a well-established fact in the military.

with inaccurate statements. The Court of Appeals cited three cases - - - none of which was in fact "on point." The Court of Appeals implied that it had also "accepted as true the facts alleged by Poe" when in fact it had not. See paragraphs 7-26 of Complaint (App. A, *infra*, pp. A2-A5) and the further discussions hereinbelow.

On May 14, 1979, the Court of Appeals filed its judgment (App. C, *infra*, p. A8), affirming the judgment of the District Court.

On May 29, 1979, Poe filed a timely Petition For Rehearing with suggestion *en banc*.

On July 19, 1979, the Court of Appeals filed its Order (App. D, *infra*, p. A8), denying said petition for rehearing.

## REASONS FOR GRANTING THE WRIT

A writ of certiorari should issue because:

1. Mr. Poe was denied the procedural due process of law in the courts below. Moreover, the courts below clearly departed from the traditional and accepted procedures of due process.

Said conflict between the *Brooks-Feres-Brown* rulings of the Supreme Court and today's ruling by the Ninth Circuit is illustrated below.

### Original Feres Ruling

"We conclude that the Government is not liable under the Federal Tort Claims Act for injuries to servicemen where the injuries arise out of or are in the course of activity incident to service." *Feres, supra*, at p. 146; in accord, *Stencel Aero Engineering Corp. v. United States*, 431 U.S. 666, 671 (1977).

### "1979 Feres Ruling" by 9th Circuit

The Government is not liable under the Federal Tort Claims Act for injuries to servicemen *who are in an active duty status*.

Thus, the Court of Appeals has ruled that all servicemen sustaining injury in an active duty status cannot sue the Government under the FTCA *under any and all circumstances*. This is pure nonsense. See *Brooks, supra*; *Hale v. United States*, 416 F.2d 355, 358 (6 Cir. 1969); and *Mills v. Tucker*, 499 F.2d 866 (9 Cir. 1974). We know this is not true. Servicemen have recovered under the FTCA for injuries not incident to their military duty. Furthermore, if the Court of Appeals really believed its own ruling, then why did it "waste" its time by allowing

Poe to orally argue before it on May 11, 1979. The Court of Appeals could have easily rendered its judgment *on the briefs alone* because Poe had already admitted that he was an Air Force Captain in active federal service at the time of his false arrest and other injuries. On the contrary, the Ninth Circuit *knew and sensed* there was an extraordinary legal controversy brewing.

First, the Brooks brothers recovered under the FTCA in spite of the fact they were both in an active duty status. Their furloughs were lawful, militarily approved and authorized, *active duty* activities. The Brooks Court wrote at 337 U.S. 49, 52:

"But we are dealing with an accident which had nothing to do with the Brooks' army careers, injuries not caused by their service except in the sense that all human events depend upon what has already transpired. Were the accident incident to the Brooks' service, a wholly different case would be presented."

Secondly, the Supreme Court *rejected* the Government's contention that the Government was not liable to the Brooks solely because they were active duty soliders. See *Feres, supra*, at p. 146.

Thirdly, the *Feres* Court recognized that the Tort Claims Act did:

"contemplate that the Government will sometimes respond for negligence of military personnel, for it defines 'employee of the Government' to include 'members of the military or naval forces of the United States,' \* \* \*." *Feres, supra*, at p. 138.

Fourthly, "The *Feres* decision did not disapprove of the *Brooks* case. It merely distinguished it, holding that the Tort Claims Act does not cover 'injuries to service-



men where the injuries arise out of or are in the course of activity incident to service.' " *Brown, supra*, at p. 112.

Fifthly, the *Brown* Court adhered "to the line drawn in the *Feres* case between injuries that did and injuries that did not arise out of or in the course of military duty." *Brown, supra*, at p. 113.

In further support of this petition, the Ninth Circuit's reasoning collides squarely with Table 12-1, "Proper Claimants Under The Federal Tort Claims Act," of Air Force Manual 112-1, "Claims Manual," dated 1 December 1972. Consider Rules 2 and 3 of said Table 12-1, which are consistent with the *Feres* doctrine.

Rule 2 provides:

"If a claimant is a member of a US Armed Force in active Federal service and damage, injury or death was not incident to his service, then he is a proper claimant (\* \* \*)."

Rule 3 provides:

"If a claimant is a member of a US Armed Force in active Federal service and damage, injury or death was incident to his service, then he is not a proper claimant (\* \* \*)."

Using the reasoning of the Ninth Circuit,

Rule 2 would now read:

If a claimant is a member of a US Armed Force in active Federal service, then he is not a proper claimant.

Rule 3 would now read:

If a claimant is a member of a US Armed Force in active Federal service, then he is not a proper claimant.

Thus, we see that an absurdity exists, for we cannot now distinguish Rules 2 and 3. Therefore, one's "active duty status" is not the sole controlling and dispositive factor in determining when and what injuries are incident to one's military service. In effect, today's ruling by the

Court of Appeals says that *all injuries* to servicemen who are in an "active duty status" are *automatically* "incident to their service." Nonsense prevails.

Today, the ruling of the Ninth Circuit does not comport with the *Feres* doctrine. Today, the Ninth Circuit has re-written the "Brooks-Feres-Brown" doctrine.

2. A crucial and dispositive issue remains unsettled and unresolved. This Court should authoritatively interpret the legal meaning of the phrase

"where the injuries arise out of or are in the course of activity incident to service." *Feres, supra*, at 146.

This Court has never construed the legal meaning of said phrase in the context of the *Brooks, Feres, and Brown* cases.

Instead of using the opportunity to clarify the "incident to service" test or standard, the Court of Appeals failed in its judicial responsibilities and avoided an important and dispositive issue. Apparently, the courts below are somehow not able to objectively and factually distinguish between what is and what is not "incident to one's service." Thus, this case presents an opportunity for the Supreme Court to finally clarify the law.

3. The Court of Appeals for the Ninth Circuit has rendered a decision in direct conflict with a series of Supreme Court decisions. In short, the Ninth Circuit has rewritten the so-called *Feres* doctrine, which was created and clarified by the line of Supreme Court cases in *Brooks v. United States*, 337 U.S. 49 (1949), *Feres v. United States*, 340 U.S. 135 (1950), and *United States v. Brown*, 348 U.S. 110 (1954).

Because Poe was in an active duty (employment) status, the District Court erroneously and automatically

assumed that Poe's injuries were therefore incident to his military service. No presentation of the facts or evidence was permitted. *The District Court disregarded the presumed truth of the allegations of the Complaint in a light most favorable to Mr. Poe. The Court of Appeals did likewise, yet it "professed" to accept as true the facts alleged by Poe when in fact it had not. For example, consider the paradoxical conflict (illustrated below) which had confronted the Court of Appeals.*

*Allegations in Complaint      Statement by 9th Circuit*

Poe's injuries did not arise out of line of duty nor out of lawful activity incident to his service. (See App. A, *infra*, pp. A1-A6.) Accepting Poe's allegations as true, we conclude that Poe's alleged injuries were incident to his service. (See App. B, *infra*, p. A7.)

Thus, the Court of Appeals did *not* accept Poe's allegations as true and in a light most favorable to him, but instead *assumed* that a serviceman's "active duty status" was automatically equivalent to "injuries incident to his service." Such an assumption or contention was rejected by the *Feres* Court. This major assumption by the Court of Appeals not only proves far too much but actually re-writes the *Feres* doctrine.

Thus, the Court of Appeals summarily and erroneously concluded that the "facts" were so clear at this stage of the pleadings, *in the absence of evidentiary hearings*, that Poe's injuries were incident to his service, "as a matter of law" (see App. B, *infra*, p. A7) - - - thereby procedurally by-passing a dispositive question of fact. This is a clear departure from the usual and accepted procedures of due process.

4. This civil action is a highly unusual case, involving not only gross constitutional transgressions by

the military but an important *limitation* on the blind application of (or the unwarranted over-extension of) the original *Feres* doctrine. This limitation was created by the *Feres* Court and reaffirmed by the *Brown* Court. In essence, this limitation is epitomized by the following statement.

We adhere to the line drawn in the *Feres* case between injuries that did and injuries that did not arise out of or in the course of military duty. If the negligent act or acts giving rise to the injury were not incident to the serviceman's lawful duty, or if the serviceman's relationship to his tortfeasor(s) were not analogous to that of a serviceman injured while performing duty under lawful orders or under lawful military obligations, then the *Brooks* case governs, and the Government is liable under the Federal Tort Claims Act.

If this Court decides - - - by its judicial silence or inaction - - - that a wholly sane, innocent, and competent serviceman cannot enforce his basic constitutional guarantees and legal rights through the courts, then all servicemen will be at the mercy or whim of those military authorities who have absolutely no qualm about deliberately abusing their command and/or medical authority to accomplish *unlawful*, peacetime objectives . . . or to cover up wrongdoing and active misconduct in the military. If this Court decides that a serviceman cannot enforce his basic constitutional rights through the courts, then this Supreme Court may be encouraging not only the erosion of our Constitution but also, in the instant case, the actual human experimentation with drugs upon an unconsenting serviceman.

**CONCLUSION**

For the reasons and authorities hereinabove stated, the petitioner respectfully requests that this Honorable Court grant this petition for a writ of certiorari.

Respectfully submitted,

LEWIS W. POE  
*Petitioner Pro Se*

October, 1979

**APPENDIX A**

IN THE UNITED STATES DISTRICT COURT  
for the District of Hawaii  
Civil No. 77-0049

LEWIS POE,  
Plaintiff,

vs.

UNITED STATES OF AMERICA,  
Defendant.

**COMPLAINT**

(Filed February 15, 1977)

**COMPLAINT**

To the United States District Court for the District of Hawaii:

Plaintiff [herein referred to as "Capt Poe" or "Poe"] alleges as follows:

**JURISDICTION**

1. This action in tort against the United States for damages is brought pursuant to 28 U.S.C. 1346(b).
2. Most of the acts upon which this complaint is founded occurred within the State of Ohio.
3. Plaintiff resides in Honolulu, is a citizen and resident of State of Hawaii.
4. Plaintiff has exhausted his administrative remedy by having presented his claim to the Claims and Tort



Litigation Div., Hqtrs, USAF, Washington, D. C. 20314. Denial of claim was finalized in writing on August 16, 1976 by the Department of the Air Force, Washington, D.C.

### INTRODUCTION

5. This is a tort claim against the United States for money damages for personal and bodily injury caused by the negligent and wrongful acts of federal employees of the Department of the Air Force who were acting under color of federal authority or within the scope of their employment at an operational level of command.

6. Briefly, plaintiff's personal injury arose out of trespass and the invasion of privacy.

7. The personal injury was sustained by Capt Poe in the course of an unlawful and involuntary medical examination of the plaintiff by the defendant United States, by and through members of the hospital staff at Wright-Patterson USAF Medical Center, Ohio, on or about May 31, 1974.

8. Plaintiff's injuries did not stem from lawful military activities. Plaintiff's injuries did not arise out of "line of duty" nor out of "lawful activity incident to military service." There was no activity which involved a lawful military relationship between the plaintiff and the USAF tortfeasors.

9. The defendant is liable under the Federal Tort Claims Act for certain injuries suffered by Poe where the injuries did not arise out of or in the course of military duty.

### SUMMARY OF FACTS

10. On May 29, 1974, during his lunch break and while assigned to duty as a Base Computer Systems Operations Officer, Dover AFB, Delaware, USAF Capt Poe was unlawfully and unconstitutionally arrested and frisked by several military policemen.

11. Under duress and coercion, Poe was unlawfully transported across several State boundaries and was unconstitutionally, involuntarily, and totally confined in a "closed" psychiatric ward at Wright-Patterson USAF Medical Center, Ohio, on or about May 31, 1974.

12. From the time of Poe's arrest, the defendant United States, by and through its employees, has *forced* Poe to submit to medical examination against Poe's will and consent, and, moreover, contrary to law and the Air Force's own regulation.

13. While it was within his power, Poe refused to be examined and treated by USAF medical personnel. Poe has never consented to any psychiatric treatment nor has he consented to the *continued* unlawful imprisonment at psychiatric facilities of the United States Government.

14. Poe was never in need of psychiatric examination or care. Poe was never a danger to himself nor to others. Poe was never mentally incompetent.

15. The defendant, by and through its doctors, nurses, corpsmen, and hospital staff at Wright-Patterson Medical Center, unlawfully and negligently examined Poe, negligently prescribed drug treatment for Poe, and wrongfully and forcibly injected drugs into the person of the plaintiff.

16. The defendant further administered drugs by coercion, menace, or duress.



17. Capt Poe was never a patient - - - only an involuntarily confined *resident* in psychiatric facilities which were operated by the government.

18. There was never any doctor-patient relationship between Poe and members of the USAF hospital staff who were involved in performing psychiatric services.

19. Said hospital personnel failed to exercise due care in examining and prescribing a course of drug treatment for the plaintiff.

20. Unlawful confinement and an illegally administered drug regimen continued for several weeks - - - not for the direct benefit of the plaintiff. There was nothing medically, emotionally, nor psychiatrically wrong with the plaintiff. Said regimen was employed as an expedient device by USAF medical personnel to assert their authority over the plaintiff - - - because of his refusal to take one 10-mg pill of Librium.

21. The defendant *voluntarily assumed* a duty to forcibly *and* illegally examine and treat the plaintiff, without medical cause and contrary to Air Force regulation.

22. The defendant assumed the obligation to provide only care which was free from negligence to meet the actual medical needs, if any, of the plaintiff and only after a proper and lawful examination.

23. The defendant breached that duty by carelessly, wrongfully performing it.

24. In June of 1974, USAF hospital personnel, in their failure to exercise due care, took it upon themselves to *force* drug treatment upon Poe for no medically justifiable reason, in the absence of Poe's consent, in disregard of Poe's protest, and in violation of Air Force Manual 168-4, "Administration of Medical Activities."

25. In June of 1974, Poe refused to take any drugs. Thereafter, 3 male nurses/corpsmen attempted to inject Poe with 50-mg of Thorazine. In Poe's attempt to avoid the hypodermic needle, a struggle ensued. Poe was subdued; Poe was injected; Poe's neck was injured. Poe was again in a "chemical straight-jacket."

26. Poe was terrified. His personal health and safety became his primary and immediate concern.

27. On August 30, 1974, Capt Poe was admitted to a psycho ward, Veterans Administration Hospital, Palo Alto, CA. Here, he received *proper care*, namely, no medical care at all. On Sept. 6, 1974, Poe was released from said VA Hospital.

#### COUNT ONE

28. The acts of USAF doctors, nurses, and/or corpsmen at Wright-Patterson Medical Center, including but not necessarily limited to the allegations set out hereinabove, constitute a trespass and invasion of plaintiff's indefeasible right to privacy, personal security, and personal liberty.

#### COUNT TWO

29. The tortious acts of doctors, nurses, and/or corpsmen at Wright-Patterson, including but not necessarily limited to the allegations set out above, constitute a failure to exercise due care and a failure to act responsibly and professionally in the examination of, in the diagnosing of, and in providing proper care to meet the actual medical needs of the plaintiff.

#### SOME INJURIES TO PLAINTIFF

30. As a direct and proximate result of tortious, negligent, and wrongful acts of employees of the United States

Air Force, who were acting within the scope of their employment, the plaintiff has suffered, among other things, (a) injury to his neck and person, including pain, mental distress, humiliation, frustration, fear, and protracted confinement in a psycho ward, (b) deprivation of his right to privacy, bodily integrity, security, and safety, the enjoyment of life and liberty, freedom against unreasonable and unlawful seizure, freedom of association, (c) deprivation of his right to refuse negligent, wrongful, and illegal treatment, (d) deprivation of his right to be advised if the hospital proposes to engage in human experimentation and his refusal of same, (e) deprivation of his dignity as a human being.

#### PRAYER FOR RELIEF

WHEREFORE, the plaintiff prays:

- (1) for judgment against the United States of America in the sum of \$1,547.00 in special damages and \$2,000,000.00 in compensatory damages;
- (2) for his costs, legal consultation fees, attorneys' fees and services, if any, incurred herein; and
- (3) for such equitable or other relief as may be just, necessary, and proper.

DATED: February 15, 1977,  
Honolulu, Hawaii.

Respectfully,

/s/ Lewis W. Poe  
Lewis W. Poe Plaintiff  
3853-C Keanu St.,  
Honolulu, HI 96816

#### APPENDIX B

#### UNITED STATES COURT OF APPEALS

For the Ninth Circuit

No. 77-3537

LEWIS POE,  
Plaintiff-Appellant,

vs.

UNITED STATES OF AMERICA,  
Defendant-Appellee.

On Appeal from the United States District Court  
for the District of Hawaii

#### MEMORANDUM

(Filed May 14, 1979)

Before: BROWNING, CHOY, and HUG, Circuit Judges.

The dismissal of Poe's complaint is affirmed. The district court properly determined that, accepting as true the facts alleged by Poe, the alleged injuries about which Poe complains were, as a matter of law, "incident to service" in the military; thus his claim is barred by the doctrine of *Feres v. United States*, 340 U.S. 135, 146 (1950). See *Henninger v. United States*, 473 F.2d 814 (9th Cir.), cert. denied, 414 U.S. 819 (1973); *Misko v. United States*, 453 F. Supp. 513 (D.D.C. 1978).

AFFIRMED.

**APPENDIX C**

UNITED STATES COURT OF APPEALS  
For the Ninth Circuit  
No. 77-3537  
DC#CV 77-0049 SPK

LEWIS POE,  
Plaintiff-Appellant,

vs.

UNITED STATES OF AMERICA,  
Defendant-Appellee.

**JUDGMENT**

(Filed August 9, 1979)

APPEAL from the United States District Court for the District of HAWAII.

THIS CAUSE came on to be heard on the Transcript of the Record from the United States District Court for the District of HAWAII and was duly submitted.

ON CONSIDERATION WHEREOF, It is now here ordered and adjudged by this Court, that the judgment of the said District Court in this Cause be, and hereby is Affirmed.

Filed and entered May 14, 1979

**APPENDIX D**

UNITED STATES COURT OF APPEALS  
For the Ninth Circuit  
No. 77-3537

LEWIS POE,  
Plaintiff-Appellant,

vs.

UNITED STATES OF AMERICA,  
Defendant-Appellee.

**ORDER**

(Filed July 19, 1979)

Before: BROWNING, CHOY and HUG, Circuit Judges.

The panel as constituted in the above case has voted to deny the petition for rehearing and to reject the suggestion for rehearing en banc.

The full court has been advised of the suggestion for rehearing en banc, and no judge of the court has voted to grant rehearing en banc. F.R.App.P. 35(b).

The petition for rehearing is denied and the suggestion for rehearing en banc is rejected.